

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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November 17, 2016

The Honorable Gene L. Dodaro
Comptroller General of the United States
U.S. Government Accountability Office
441 G Street NW
Washington, D.C. 20548

Dear Mr. Dodaro:

On August 18, 2016, the Department of Justice (DOJ), the Environmental Protection Agency (EPA), and Harley-Davidson, Inc., filed a consent decree with the United States District Court for the District of Columbia. If the court enters this consent decree, it would settle the case of *United States of America v. Harley-Davidson, Inc.*, in which the United States alleges that the defendants took various actions contrary to the Clean Air Act.¹

The decree would require the defendants to pay a \$12 million civil penalty to the government and to cease the sale of particular products that allegedly compromised some motorcycles' emissions-control systems.² In addition, the decree would require the defendants to spend \$3 million to implement an "Emissions Mitigation Project."³ The defendants would be required to enter into an agreement with the American Lung Association of the Northeast to implement the project.⁴ The project would retrofit or replace wood-burning appliances.⁵ Under the decree, the defendants must certify that they are not required to perform the "Emissions Mitigation Project" by any federal, state, or local law or regulation.⁶

Arrangements of this type are worthy of congressional review. Substantial financial penalties like this run the risk of creating the perception that the Justice Department and EPA may be using this consent decree to augment their appropriations and circumvent the appropriations process. The "Emissions Mitigation Project" is a penalty upon the defendant. However, contrary to the requirement of the Miscellaneous Receipts Act, 31 U.S.C. § 3302(b), the penalty would not be deposited in the Treasury. The decree would give EPA's Residential Wood Smoke Reduction Team a role in the implementation of the "Emissions Mitigation

¹ *United States v. Harley-Davidson, Inc.*, no. 1:16-cv-01687 (D.D.C. filed Aug. 18, 2016).

² *Id.* at 5, ¶ 8.

³ *Id.* at 9, ¶ 17.

⁴ *Id.* at Appendix A, 2, ¶ 6.

⁵ *Id.* at Appendix A, 2, ¶ 5.

⁶ *Id.* at Appendix A, 1, ¶ 2(a).

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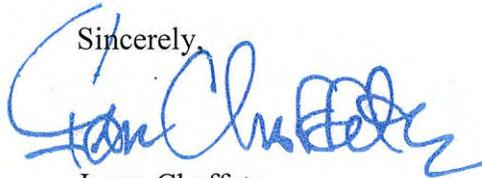
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Project,” heightening the concern that EPA may be augmenting its own operations through this settlement.⁷ In previous cases, both GAO and the Justice Department have concluded that settlements similar to this one were inconsistent with 31 U.S.C. § 3302(b). *See* B-210210, Sept. 14, 1983; B-247155, July 7, 1992; 4B Op. Off. Legal Counsel 684, 688 (1980).

Accordingly, I request GAO’s opinion concerning whether the requirement that the defendant in this case spend \$3 million for an “Emissions Mitigation Project” is consistent with the rule against augmentation and with the miscellaneous receipts statute, 31 U.S.C. § 3302(b).

If you have questions about this request, please have your staff contact Corey Cooke of the Majority staff at (202) 225-5074. Thank you for your prompt attention to this matter.

Sincerely,



Jason Chaffetz
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Member

⁷ *Id.* at Appendix A, 3, ¶ 8(a).